

WESTERN SURETY COMPANY,
Plaintiff,
v.
MITEX ROOFING, INC.,
JOHN VINCENT BROSNAHAN,
KIMBERLY BROSNAHAN, and
RUDOLPH RAY MARTINEZ,
Defendants.

THIS CAUSE coming on to be heard and being heard before the undersigned United States District Clerk, upon motion of Plaintiff Western Surety Company (hereinafter "Plaintiff"), pursuant to Rule 55 of the Federal Rules of Civil Procedure, for entry of default against Defendants John Vincent Brosnahan, Kimberly Brosnahan and Mitex Roofing, Inc. (hereinafter "Defendants"), and it appearing to the Court that:

1. Plaintiff filed a Complaint with this Court on August 5, 2010.
2. A Civil Summons was issued on August 5, 2010, directed to Defendant John Vincent Brosnahan, and was served, along with the Complaint, via hand delivery by Michael Van Keuren, Process Server, to Defendant John Vincent Brosnahan, courtesy of his wife, Kimberly Brosnahan, who resides with him, at 15066 Northgreen Drive, Huntersville, North

Carolina 28078, on August 23, 2010, as authorized pursuant to Rule 4(e)(2)(B) of the Federal Rules of Civil Procedure; service is evidenced by the Affidavit of Service filed on September 13, 2010.

3. A Civil Summons was issued on August 5, 2010, directed to Defendant Kimberly Brosnahan, and was served, along with the Complaint, via hand delivery by Michael Van Keuren, Process Server, to Defendant Kimberly Brosnahan at 15066 Northgreen Drive, Huntersville, North Carolina 28078, on August 23, 2010, as authorized pursuant to Rule 4(e)(2)(A) of the Federal Rules of Civil Procedure; service is evidenced by the Affidavit of Service filed on September 13, 2010.

4. Pursuant to Rule 12(a)(1)(A)(i) of the Federal Rules of Civil Procedure, Defendants John Vincent Brosnahan and Kimberly Brosnahan were required to serve their answer or otherwise respond to the claims set forth in Plaintiff's Complaint within 21 days after service of the Civil Summons and Complaint, through and including September 13, 2010.

5. September 13, 2010 has passed and Defendants John Vincent Brosnahan and Kimberly Brosnahan have failed to file or serve an answer or otherwise respond to the claims against them.

6. A Civil Summons was issued on August 5, 2010, directed to Defendant Mitex Roofing, Inc., and was served, along with the Complaint, to the North Carolina Secretary of State, c/o Service of Process Agent, at Post Office Box 29622, Raleigh, North Carolina 27626 on September 7, 2010, pursuant to N.C.G.S § 55D-33, as authorized pursuant to Rule 4(h)(1)(B) of the Federal Rules of Civil Procedure; service is evidenced by the Affidavit of Service filed on October 8, 2010.

7. Pursuant to Rule 12(a)(1)(A)(i) of the Federal Rules of Civil Procedure, Defendant Mitex Roofing, Inc. was required to serve its answer or otherwise respond to the claims set forth in Plaintiff's Complaint within 21 days after service of the Complaint, through and including September 28, 2010.

8. September 28, 2010 has passed and Defendant Mitex Roofing, Inc. has failed to file or serve an answer or otherwise respond to the claims against it.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COURT CONCLUDES AS A MATTER OF LAW that Defendants John Vincent Brosnahan, Kimberly Brosnahan and Mitex Roofing, Inc. are subject to Entry of Default on Plaintiff's claims.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Default is hereby entered against Defendants John Vincent Brosnahan, Kimberly Brosnahan and Mitex Roofing, Inc. on Plaintiff's claims.

This the 6th day of January, 2011.



DENNIS P. IAVARONE, CLERK